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W.P.No.32577 of 2024

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.32577, 32581 and 32586 of 2024

and

W.M.P.Nos.35407, 35408, 35409, 35410, 35417 and 35419 of 2024

Sengodan Thiyagarajan (Deceased),
Sole Proprietor of Tvl.K.P.S.Engineering Constructions,
Represented by his legal heir S.Sudha,
Aged 40 years,
87A1, Komburankadu, Karuppureddiyur,
Mettur, Salem,
Tamil Nadu 636 404.

... Petitioner
in all W.P.'s

Vs.

The Assistant Commissioner,
Mettur Assessment Circle,
6-1-182, Sakthi Nagar,
Raman Nagar Post Salem Main Road,
Mettur Dam 636 404.

... Respondent
in all W.P.'s

Prayer in W.P.No.32577 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari , calling for records in order passed u/s.73 of TNGST Act, 2017 in Reference No.ZD330424226537H dated 28.04.2024 along with summary of order dated 28.04.2024 on the file of the respondent relating F.Y.2018-19 and quash the same.



W.P.No.32577 of 2024

Prayer in W.P.No.32581 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari , calling for records in order passed u/s.73 of TNGST Act, 2017 in Reference No.ZD331223265467E dated 29.12.2023 along with summary of order dated 29.12.2023 on the file of the respondent relating F.Y.2017-18 and quash the same.

Prayer in W.P.No.32586 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari , calling for records in order passed u/s.73 of TNGST Act, 2017 in Reference No.ZD330824300763J dated 31.08.2024 along with summary of order dated 31.08.2024 on the file of the respondent relating F.Y.2019-20 and quash the same.

For Petitioner
in all Writ Petitions : Ms.Janani

For Respondent : Mr.TNC Kaushik
in all Writ Petitions Additional Government Pleader

COMMON ORDER

These writ petitions are filed challenging the impugned orders passed by the respondent bearing Ref.No.ZD331223265467E, dated 29.12.2023 for the financial year 2017-18; Ref.No.ZD330424226537H, dated 28.04.2024 for the financial year 2018-19 and Ref.No.ZD330824300763J, dated 31.08.2024 for the financial year 2019-20 on the premise that the assessment order cannot be made in the name of the dead person viz., Sengodan Thiyagarajan, who was the



W.P.No.32577 of 2024

proprietor of the petitioner.

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2. It is submitted by the learned counsel for the petitioner that identical issue has come up for consideration before this Court in the case of R.Unnikrishnan Vs. Union of India reported in 2024 (21) CENTAX 47 (Mad.), wherein, while considering an identical issue, it was held as under:

"9. There is no dispute that the dealer Mr.Radhakrishnan Pillai has died on 11.10.2017 and that the petitioner is one of his legal heirs/legal representatives along with his mother R.Sujatha aged about 62 years, his sister Sreelekshmi aged about 33 years and his grand-mother Nalinakshi Amma aged about 84 years.

10. The order that has been passed against the dead person is non-est in law. If the petitioner is carrying on the business of the deceased person, then, the remedy is available to the Department to proceed against the petitioner under Section 93 of the TNGST Act, 2017. It appears to be that the petitioner is not carrying on the business of the deceased person.

11. Be that as it may, since the impugned order has been passed against the dead person, the impugned order is quashed by directing the respondents to issue a common notice to the petitioner representing the interest of the other legal heirs/legal representatives of the deceased dealer Mr.Radhakrishnan Pillai, within a period of 30 days from the date of receipt of a copy of this order and thereafter proceed in the manner known to law, in case the petitioner is carrying on the business of the deceased dealer Mr.Radhakrishnan Pillai."

3. The learned counsel for the respondent would submit that the order is



W.P.No.32577 of 2024

an appealable order and this writ petition ought not to be entertained.

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4. Heard both sides and perused the material on record.

5. This Court is conscious of the fact that normally jurisdiction under Article 226 would not be entertained when there is an alternate remedy, however the same is not an absolute bar but is a self imposed restriction and has exceptions carved out to the above rule, one such exception is where the order is without jurisdiction. The assessment made in the name of dead person has been held to be a nullity and would thus fall within the exception to the rule of alternate remedy.

6. At this juncture, it was submitted by the learned Senior Standing Counsel for the respondents they may be granted liberty to issue common notice to the legal heirs of the deceased Sengodan Thiyagarajan, within a period of thirty (30) days from the date of receipt of a copy of this order and thereafter, proceed in the manner known to law.

7. Recording the same, the impugned order is set aside. The writ petition stands disposed of by granting liberty to the respondents to issue common



W.P.No.32577 of 2024

notice to the legal heirs of the deceased Sengodan Thiagarajan, within a period of thirty (30) days from the date of receipt of a copy of this order and thereafter, proceed in the manner known to law. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

05.11.2024

Index : Yes / No
Internet : Yes/ No
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W.P.No.32577 of 2024

To:

The Assistant Commissioner,
Mettur Assessment Circle,
6-1-182, Sakthi Nagar,
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